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and Other Cruel, Inhuman
or Degrading Treatment
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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 1996

Addendum

SWITZERLAND*

[7 November 1996]

* The initial report submitted by the Government of Switzerland is contained in document CAT/C/5/Add.17; for its consideration by the Committee, see documents CAT/C/SR.28 and 29 and the Official Records of the General Assembly, Forty-fifth session, Supplement No. 44 (A/45/44, paras. 87-114). For the second periodic report, see document CAT/C/17/Add.12; for its consideration by the Committee see documents CAT/C/SR.177, 178 and 178/Add.2 and the Official Records of the General Assembly, Forty-ninth session, Supplement No. 44 (A/49/44, paras. 128-137).

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Introduction

1. On 2 December 1986, Switzerland ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention entered into force for Switzerland on 26 June 1987. Switzerland submitted its initial report (CAT/C/5/Add.17 - hereinafter referred to as the "initial report") on 14 April 1989. The report was considered by the Committee on 15 November 1989 (CAT/C/SR.28 and 29).

2. Switzerland submitted its second periodic report (CAT/C/17/Add.12) on 24 September 1992. It covers the period between 1 July 1988 and 30 June 1992, and was considered by the Committee on 20 April 1994. Following the submission of this report, the Committee asked Switzerland to provide additional information, which it did by mail on 18 November 1994.

3. The present report covers the period from 1 July 1992 to 30 June 1996.

4. For information, in February 1995 Switzerland submitted its initial report on the implementation of the International Covenant on Civil and Political Rights (CCPR/C/81/Add.8), paragraphs 78-102 of which concern the protection of the individual against torture and cruel, inhuman or degrading treatment or punishment. This report was considered by the Human Rights Committee at its fifty-eighth session, 24-25 October 1996.

5. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) paid a second visit to Switzerland - to the Cantons of Bern, Geneva, Ticino, Valais, Vaud and Zurich - between 11 and 23 February 1996. It visited places of preventive detention, custody, imprisonment, secure rooms for prisoners in a hospital, a security detention centre, a centre for close arrest, a registry for asylum seekers and a neuropsychiatric hospital. Its report was submitted to the Swiss Government in early October 1996.

6. As regards the legal provisions and remedies which in Switzerland protect the individual against torture and other cruel, inhuman or degrading treatment or punishment, information is given in paragraphs 1-32 of the initial report; it must be stressed that Swiss criminal law, while it does not contain any provisions specifically against torture, covers all aspects of the definition of torture given in article 1 of the Convention and fully meets the stipulations of article 4.

7. Acts constituting torture or other cruel, inhuman or degrading treatment are covered by special provisions of the Swiss Criminal Code (CPS). The Code also applies to persons performing administrative functions.

8. The acts referred to in article 1 of the Convention are covered first of all by the provisions protecting life and physical integrity (CPS arts. 111-136). These were amended by the Act of 23 June 1989, which entered into force on 1 January 1990. With regard to torture, besides homicide (CPS art. 111 et seq.) and endangering the life or health of another (CPS art. 127 et seq.), bodily injury (CPS arts. 122-126) has a specific meaning: the offence of causing simple bodily harm (CPS art. 123), which can also be committed by negligence (CPS art. 125), is committed when transient

discomfort equivalent to a state of illness is caused to another person (for example, substantial pain, a nervous shock, intoxication or dizziness). Case law holds that the same applies to substantial affronts to physical integrity that have no effect on health, such as shaving the head completely bare or administering injections. Lesser affronts, causing no more than a temporary decrease in well-being, such as minor swelling, contusions, abrasions and scratches, are punishable as assault under CPS article 126. According to a new ruling by the Federal Court, the threshold of punishability is crossed when physical attack in excess of what is customarily acceptable is sustained. Bodily harm, damage to health or pain does not have to ensue. It should also be noted that assaults constituting bodily harm under the Swiss Criminal Code include acts whose severity clearly brings them within the scope of torture as defined in article 1 of the Convention.

9. Psychological pressure is covered first of all by the provisions on crimes and offences against liberty (CPS art. 180 et seq.). Causing alarm or fright by making a grave threat is punishable under article 180. Anyone who, by acting violently towards a person or threatening him with serious harm, or by otherwise restricting his freedom of action, compels him to commit, not to commit, or to allow an act to be committed, is guilty of using menaces (CPS art. 181). Using menaces is illegal not only when the perpetrator applies unlawful pressure or pursues illegal ends but also when the pursuit of an end that is lawful in itself, combined with a means which is also lawful in itself, constitutes an abuse of rights or is found to be immoral.

10. Next comes abuse of authority (CPS art. 312). This offence applies to persons in authority and public servants who abuse their official powers to secure an unlawful advantage for themselves or others or to harm another. It is not necessary for the intended advantage or injury, as the case may be, to be property-related. A violation of CPS article 312 also occurs when unacceptable or disproportionate means are used in pursuit of an end that is in itself legitimate.

11. The provisions governing offences against sexual integrity (CPS, art. 187), amended by Federal Act of 21 June 1991 and in force since 1 October 1992, also apply to torture. Besides the offences of procuring a sexual act by duress (CPS, art. 189) and rape (CPS, art. 190), attention should be drawn to the criminal legislation which protects dependents, persons incapable of resistance and victims of sexual abuse (CPS, arts. 188 and 191 et seq.) According to article 192 of the Criminal Code, anyone who takes advantage of a state of dependence to compel a hospital patient, inmate, arrested person or unconvicted prisoner to commit or submit to a sexual act shall be subject to punishment.

12. It should be noted that, under the general section of the Criminal Code, attempts to commit, instigation of and complicity in an offence are also taken into consideration (CPS, arts. 21 et seq.). A ban on corporal punishment appears in the Swiss Constitution (art. 65, para. 2). Last, an amendment to the Military Criminal Code on 1 September 1992 totally abolished the death penalty. At the international level, Switzerland ratified Additional Protocol No. 6 to the European Convention on Human Rights on 13 October 1987. It also acceded to the Second Optional Protocol to the International Covenant on Civil

and Political Rights on 16 June 1994. Since this Protocol may not be denounced, abolition of the death penalty in Switzerland is irrevocable.

I. INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS OF RELEVANCE TO THE IMPLEMENTATION OF THE CONVENTION

Article 2

13. During the period under consideration, 23 petitions were lodged with the European Commission of Human Rights against Switzerland for violation of article 3 of the European Convention on Human Rights. Twenty of them were declared inadmissible by the Commission. One case was the subject of a decision by the Committee of Ministers, which ruled that there had been no violation of article 3 of the European Convention. Another was declared admissible; however, since an amicable settlement was reached, the case was never brought before the Court. One case is currently pending before the Commission.

14. For the rest, the information provided in paragraphs 34-37 of the initial report is still valid.

Article 3

15. By way of introduction, reference should be made to paragraphs 38-41 and 43-44 of the initial report and paragraphs 8-16 of the second periodic report.

16. During the period under consideration, there have been no extradition decisions in violation of the principles of the Convention. However, when extraditions entailing a risk of violation of human rights have been effected, they have been made subject to a guarantee by the requesting State that the rights of the person to be extradited will be respected.

17. The Federal Act on Asylum of 5 October 1975 was amended upon the introduction of the Federal Act on Coercive Measures in Respect of Aliens Law, which entered into force on 1 February 1995. The information provided in paragraphs 9-16 of the second periodic report therefore needs to be supplemented.

18. With regard to the functioning of the asylum procedure, it is necessary to explain the following.

19. The asylum procedure is governed by the provisions of the 1951 Convention relating to the Status of Refugees, Federal asylum legislation, the Federal Act of 20 December 1968 on administrative procedure and the Federal Constitution of 29 May 1874. Every asylum seeker, without exception, is entitled to the protection offered by these rules of law.

20. A request is deemed to have been made whenever an alien makes it known, in writing or otherwise, that he or she seeks protection against persecution. This request may be submitted to a Swiss Government office abroad, at an open border crossing, at an airport passport control office or within the country.

21. As part of the fact-finding procedure the asylum seeker is given a preliminary hearing, conducted with the assistance of an interpreter and in the presence of a representative of a recognized assistance organization, who functions as a neutral observer. The latter verifies whether the rules of procedure are respected during the hearing and may, if necessary, include his objections in the official record of the hearing or request further explanations. At this stage, the asylum seeker may justify his application and explain why he is requesting asylum. The right to a hearing is thus guaranteed. The official record is prepared after the hearing, translated, and then signed by the asylum seeker. Supporting documents such as medical reports and other pieces of evidence may be added to the file. If necessary, Swiss Government offices abroad or international organizations may be asked to provide additional information.

22. Once the facts have been established, a decision is handed down by the Federal Office for Refugees at first instance. In making this decision, the Office's primary task is, on the one hand, to determine whether the asylum seeker meets the criteria for refugee status under article 3 of the Act on Asylum and, on the other, to verify that there are no legal grounds for refusing asylum. If it is shown that these criteria are met or, there are at least reasonable grounds for believing that such is the case, asylum is granted.

23. If asylum is refused, it must be decided whether the asylum seeker is to leave Swiss territory and return to his State of origin or, if necessary, another State, or whether he should nevertheless be authorized to remain in Switzerland. Thus, any decision to expel a person whose request for asylum has been rejected is considered from the point of view of admissibility, enforceability and feasibility.

24. An asylum seeker will be sent back to his State of origin or nationality or to another State only if he or she can be without violating any of Switzerland's obligations under international law, including the provision on non-expulsion and non-return in article 33 of the Convention on the Status of Refugees, the principle of non-return derived from article 3 of the European Convention on Human Rights and the principle of non-return set forth in article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The protection against return guaranteed by article 33 of the Convention on the Status of Refugees applies to all refugees, whether or not they have been recognized as such by the competent national authorities. Protection under article 3 of the European Convention on Human Rights is available to anyone under Swiss jurisdiction, including aliens, whether or not their presence in Switzerland is authorized by law. Last, article 3 of the 1984 Convention against Torture prohibits the return of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

25. If, upon consideration, return appears admissible, the authorities must determine whether it is enforceable: whether return would place the asylum seeker in real danger. There is always real danger when the general political situation of the country in question is one of war, civil war or widespread violence.

26. If the request for asylum was made at an airport and the asylum seeker is to be returned whence he came, the Swiss authorities must first contact the Office of the United Nations High Commissioner for Refugees (UNHCR). The asylum seeker will be sent back only if the Swiss authorities and UNHCR agree that he is clearly not at risk of persecution.

27. Last, the feasibility of return - whether it is practically and technically possible to send the applicant back - is considered.

28. If, upon consideration, return does not appear admissible, enforceable or feasible, the Federal Office for Refugees will order the person in question to be provisionally admitted for a maximum of 12 months. If the factors preventing return persist beyond this period, the cantonal authorities are required to extend the authorization for additional 12-month periods. If, on the contrary, the asylum seeker can be sent back, he will be allowed a suitable period to leave Swiss territory, and is thus given the opportunity to leave voluntarily. If he does not do so by the deadline set, the cantonal authorities are required to enforce the decision ordering his return.

29. When a request for asylum is rejected in first instance by the Federal Office for Refugees, the asylum seeker has 30 days to appeal against the decision. Generally speaking, an appeal has suspensory effect, which means that the decision is not carried out while the appeal is pending.

30. The new asylum legislation authorizes the Federal Office for Refugees to set aside the suspensory effect of an appeal in certain cases of abuse specifically defined in the Act or where an asylum seeker is sent back after a decision has been taken not to consider his application. In such cases, the person in question has 24 hours between being informed of the decision and being sent back in which to apply for restoration of suspensory effect. The authorities must then rule on the application within 48 hours.

31. The appeal body is the Federal Commission on Appeals in Asylum Matters, a court which specializes in asylum-related questions. The Commission is independent of both the Government and the administration. Its judges are bound only by the legal provisions whose application they oversee. It has full jurisdiction: it may hear not only cases involving violations of international or Federal law, but also those where authority has been abused or exceeded, where there has been a faulty or incomplete establishment of the facts or where the principle of proportionality has been violated. If it agrees to hear an appeal, it may hand down a decision itself or refer the matter to the Federal Office for Refugees for reconsideration of the recital. If the appeal is rejected, the judgement in first instance becomes enforceable and the individual must leave the country.

32. Once a decision by the Commission has entered into force, application may be made for a review if the claimant can present new facts or evidence not previously available to him, of which he was not aware or which could not be submitted, or in cases involving procedural irregularities. The Commission must rule on such applications, which must be submitted within 90 days of discovery of the grounds for review and in any case no later than 10 years after the appeal decision is handed down.

33. The second special remedy is a request for reconsideration of an application. The Federal Office for Refugees is required to reconsider if the situation has changed substantially since it handed down its decision or if the asylum seeker presents major new facts and evidence. In such cases, the decision is set aside, and the case retried on the basis of the new evidence.

34. The Federal Act on Coercive Measures in Respect of Aliens Law was adopted by Parliament on 18 March 1994. It was approved by referendum on 4 December 1994 and entered into force on 1 January 1995.

35. On principle, domestic and international law do not permit aliens to be expelled or subjected to restrictions on their liberty in the absence of legal grounds. For example, both the authorities with jurisdiction in asylum-related matters and the cantonal authorities responsible for criminal prosecution and the execution of sentences are bound by the principle of non-return.

36. The principle of non-return is a binding obligation on a State regardless of the behaviour of the alien in question. Under article 45 of the Federal Act on Asylum and article 33 of the Convention on the Status of Refugees, an individual may be considered dangerous to the community - and may therefore be expelled without regard for the principle of non-return - only if there are overriding reasons to consider that he poses a threat to national security or if he has been convicted of a particularly serious crime. Even then, the requirements of article 3 of the European Convention on Human Rights and article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must be taken into consideration. Thus, an alien may not be expelled if expulsion would entail a substantial risk of torture or inhuman or degrading treatment.

37. The Convention on the Status of Refugees does not prohibit the detention of asylum seekers during asylum proceedings provided that detention appears necessary and is authorized by law.

38. Anyone entering Switzerland to seek protection has a right to conscientious consideration of his situation by the authorities. This right is guaranteed by the legislation on asylum and aliens. On the other hand, an alien seeking protection in Switzerland must not hinder the progress of the proceedings and must accept the eventual outcome. He may not extend his stay in the country after being notified of a decision to send him back. It has, however, become increasingly difficult to enforce such returns, on the one hand because some asylum seekers attempt to dodge the decision, for example, by going into hiding or concealing their true identity, and, on the other, because a small percentage of aliens, sheltering behind asylum proceedings or the safeguards offered by the procedural regulations of the aliens department, commit crimes. To enable the cantons - the authorities responsible for carrying out decisions to send asylum seekers back - to do their job, the Swiss Government passed the Federal Act on Coercive Measures in Respect of Aliens Law, which supersedes and in part supplements previous legislation on residence and settlement by aliens as regards the execution of decisions to send aliens back out of Switzerland. Its principal features are noted below.

39. An alien without permission to reside or settle in Switzerland may be placed in detention by the competent authorities for a period not to exceed three months if, during asylum or return proceedings, he refuses to state his identity, submits several applications for asylum under different names, repeatedly fails to appear when summoned without good cause, leaves the region to which he has been assigned or enters a forbidden area, violates an exclusion order and cannot be immediately expelled, submits a request for asylum after the entry into force of an administrative decision for his expulsion, or poses a grave threat to or seriously endangers other people's lives or persons and is therefore facing prosecution or has been convicted.

40. The new Act extends to three months (as opposed to one month under the former legislation) the period of detention prior to return. If there are specific obstacles to return or expulsion, detention may be extended by a maximum of six months, in order to ensure that the person in question remains in detention if there is valid reason to fear that he will attempt to avoid being returned.

41. Federal legislation on coercive measures is backed up by judicial safeguards. Any order for detention or extension thereof is automatically subject to judicial review within 96 hours. This review takes place at an oral hearing and considers the legality of the detention. After one month, the detainee may apply for release. A judge must rule on the application at an oral hearing within one week. A second judicial review may be requested after a further month, in cases of preparatory detention, or two months in cases of detention prior to return.

42. Asylum seekers also have the right to appear before a judge in cases involving restriction of their freedom of movement. The ordinary appeal procedures of individual cantons may be invoked against decisions by the court of first instance; if necessary, the Federal Court is responsible for ruling on administrative appeals.

43. If return proves legally impossible, either because the person in question is at risk of ill-treatment in the State to which he would be returned or for technical reasons, preparatory detention or detention prior to return must immediately be terminated.

44. Several cantons have had great difficulty in introducing the Federal Act on coercive measures. In the months following its entry into force, many people were detained under conditions which some judges termed deplorable. The poor conditions were the result of prison overcrowding owing to a shortage of cells or appropriate facilities since people detained under the Act on coercive measures must be separated from those detained under criminal law.

45. The implementation of the new Act on coercive measures has led to the development of copious case-law at both cantonal and federal levels. Between 1 January 1995 and 31 March 1996, a total of 96 appeals were lodged with the Federal Court, 16 of which were found to be justified and 9 partially justified.

46. Of the applications filed with the European Commission of Human Rights and submitted to the Government of Switzerland for its observations, three concerned individuals whom it had been decided to return. In all three cases, the application was ruled inadmissible.

47. Twelve communications laying charges against Switzerland have been set before the Committee against Torture:

Three communications were declared inadmissible;

One communication was struck off the list following temporary admission of the applicant to Switzerland;

The procedure in respect of one communication was suspended following the subsequent lodging by the authors of applications for re-examination and review with the Federal Office for Refugees and the Swiss Commission on Appeals in Asylum Matters;

In two cases, the Committee found that the decision to expel the applicant violated article 3 of the Convention;

Five cases are still pending before the Committee.

48. It is apparent from this description of the provisions governing asylum procedure in Switzerland that any decision to return an asylum seeker gives due consideration to the applicant's rights to an equitable decision, through, on the one hand, the procedural safeguards available at every stage of the procedure and, on the other, the consideration given to all the circumstances militating in favour of observance of the principle of non-refoulement. Taken as a whole, the asylum procedure ensures as comprehensive and detailed an examination as possible of applications for asylum. Moreover, the bodies set up by the European Convention on Human Rights have never found any violation by Switzerland of article 3 of the European Convention, which is the counterpart to article 3 of the United Nations Convention against Torture.

49. The Government of Switzerland wishes to engage in a constructive dialogue with the Committee and would like to make a number of comments on the Committee's findings in the cases of B. Mutombo (communication No. 13/1993) and I. Alan (communication No. 21/1995). In both communications, the Committee came to the conclusion that if carried out, Switzerland's decision to return the authors would constitute a violation of article 3 of the Convention. While it respects the authority of these decisions, the Government of Switzerland believes that they fail to take into account all aspects of the two cases. The contradictions in the applicants' statements bearing on essential details of their applications for asylum have not been given due consideration, nor has the information gathered on the spot by the Swiss embassies. It is obviously not possible to require individuals who allege that they have been tortured to submit an absolutely flawless presentation of their grounds for seeking asylum. The Swiss authorities fully concur with the Committee in this respect. Moreover, it should be pointed out that both the legislator (art. 12 (a) of the Federal Law on Asylum) and the Federal Commission on Appeals in Asylum Matters have established strict safeguards for the evaluation of contradictory statements made by applicants.

Thus, in view of the tragic events that may have been experienced by certain asylum seekers and their direct impact on the verisimilitude of statements by persons applying for protection, importance is attached to contradictions only when they concern essential details of the grounds for seeking asylum and directly contradict other statements made in the course of the asylum proceedings.

50. The recitals to the two decisions referred to above do not indicate why the Swiss Government's arguments, based on the seriousness of the author's contradictions, were set aside.

51. The grounds invoked to support the authorities' decisions to refuse asylum were partly based on additional information gathered in the States of origin of the authors of the two communications, in particular by the Swiss embassies. In one of the two cases, the Swiss Government believed that it was essential to collect such information in order to prepare its observations to the Committee, so that it could assess the potential risk to the applicant if he was returned to his country of origin. However, the Committee failed to balance this information against the statements made by the applicants, for the purposes of article 3.1 of the Convention. In the second case, it set the information aside solely on the grounds of statements made by the author's wife. In the absence of additional evidence, caution should be exercised in assessing evidence in this manner. Moreover, it tends to shift the burden of proof onto the Government, in a manner not provided for by the Convention.

52. In order to provide the various national bodies with guidance in interpreting and implementing the Convention, the Committee should in taking its decisions conduct a properly reasoned evaluation of the various arguments at hand and explain in detail why the elements taken into consideration by the national authorities did not, in its view, appear relevant.

53. As far as the Government of Switzerland is aware, a total of 13 individual communications concerning Switzerland have so far been set before the Committee. All but three have been transmitted to the Government for its observations. In eight cases, the Committee requested Switzerland to suspend the return of the applicants. In this connection, it should be pointed out that the possibility of requesting the stay of a decision is not provided for by the Convention, but by the Committee's rules of procedure. Nevertheless, in each case the Committee's recommendations have been fully complied with by the Swiss authorities.

54. Switzerland is concerned about the consequences of the Committee's almost routine requests for decisions to be stayed. This practice is contrary to the very purposes of the national asylum procedure, which is designed to process applications rapidly and take action on the ultimate decisions reached while preserving applicants' rights.

Article 4

55. The information provided in paragraphs 46-50 of the initial report may be supplemented by the following information.

56. During the period under consideration, several amendments were made to the Criminal Code and the Military Criminal Code. The amendments were the outcome of a comprehensive review of both codes aimed at adapting them to the contemporary demands of policy to combat crime. Paragraphs 20-28 of the second periodic report give ample information on the amendments which came into force in 1992.

57. Of the other provisions which came into force during the period under review, we shall refer, by way of information, to the introduction of a provision to penalize racial discrimination (Criminal Code, art. 261 (bis); Military Criminal Code, art. 171 (c)), which came into force on 1 January 1995. On 29 December 1994, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination came into force in Switzerland.

Article 5

58. The information provided by Switzerland in its initial report is still valid (para. 52).

Article 6

59. The information provided by Switzerland in its initial report (paras. 53-54) should be supplemented by the following information.

60. Pursuant to resolutions 827 (1993) and 955 (1994) of the United Nations Security Council, concerning cooperation with the international tribunals established to prosecute persons responsible for serious violations of international humanitarian law committed, in the case of the first resolution, on the territory of the former Yugoslavia since 1991, and in the case of the second, in the territory of Rwanda and by Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, the Swiss Parliament on 21 December adopted a decision on cooperation with the two tribunals, which came into force the following day. In that decision, Switzerland undertook to enforce warrants of arrest issued by the tribunals and to transfer persons being prosecuted.

61. By way of information, Switzerland has arrested four individuals. In one case, the accused was released after a few days as a result of the investigation, the grounds for his arrest having proved unfounded. Three other persons are still being held.

62. Switzerland has not transferred anyone to the International Tribunal in the Hague. In one case, the Tribunal has requested delegation of the criminal proceedings under way in Switzerland. This request is being examined by the Military Court of Cassation.

Article 7

63. The information provided by Switzerland in paragraphs 52-59 of its initial report, and in paragraph 32 of its second periodic report, may be supplemented by the following information.

64. During the period under review, a number of Swiss cantons amended their codes of criminal procedure. Generally speaking, the amendments reinforce the rights of the defence and persons in pre-trial detention, notably by recognizing the European Court of Human Rights as the court of final appeal:

The Canton of Bern has completely amended its Code of Criminal Procedure, which will come into effect on 1 January 1997; the amendments concern, inter alia, the provisions on custody and police questioning;

In the Canton of Jura, the Code of Procedure of 1990, which came into force on 1 January 1993, guarantees, by introducing adversarial examination, increased protection for the defendant and provides that such examination may be suspended only on an exceptional basis;

The Act of 13 May 1992, amending the Code of Procedure of Valais, more specifically reinforces the rights of the defence at the preliminary investigation and examination proceedings stages. It specifies the rights of persons under arrest and limits incommunicado detention.

65. Other cantons, including Aargau and Zug, are currently in the process of amending their codes of criminal procedure.

66. On 26 April 1996 the parliament of the Canton of Geneva adopted a bill designed both to prevent police violence and to extend the rights of the defence. The new legislation, which will come into force after the period necessary for the referendum, will make the following amendments to either the Code of Criminal Procedure or the Police Act:

Persons arrested by the police will be provided with a form, in several languages, setting out their rights. Previously, only persons charged by the examining magistrate were systematically informed of their rights;

Persons held in police custody on suspicion of having committed an offence will routinely be given a medical examination when taken into custody, unless they specifically refuse. It will be possible to follow up the medical examination at the beginning of custody by another at the end;

Unless there are grounds for fearing collusion, arrested persons may inform a close relative, an acquaintance or their employer, and also notify a lawyer. Aliens may inform their consulate of their detention. Anyone held by the police on a warrant may consult a lawyer within 24 hours at the latest of being taken into custody;

A number of the police's current instructions will be codified; they include the obligation to keep a register of premises where people are held in police custody, recording the times of detention and release from custody, the obligation to provide cells with a means of summoning help, a mattress and blankets;

The Council of State is required to appoint a person independent of the administration to investigate allegations of ill-treatment and report to the head of the department.

67. In addition, the Canton of Geneva has taken a number of measures to prevent ill-treatment of persons under arrest or in detention:

Since 15 October 1992, a police medical centre has been in operation. It is run by Geneva's University Institute of Forensic Medicine. It assists the police whenever it is necessary to take evidence of injuries to persons under arrest or to policemen. The information is subsequently submitted to the Public Prosecutor;

Moreover, in the spring of 1993 Geneva police officers were instructed routinely to ask arrested persons whether they had any complaints about their treatment by the police;

On 14 April 1994, the police chief issued instructions on detention on police premises. The instructions, which were essentially based on the Police Act and the Geneva Code of Criminal Procedure, set out the conditions governing searches, medical care and notification of third parties.

68. The Canton of Graubünden is currently amending its legislation relating to the implementation of the Federal Act on Coercive Measures in Respect of Aliens Law.

69. The Swiss Government intends to introduce into the Federal Code of Criminal Procedure new provisions, due to be submitted to Parliament in 1997, to strengthen the rights of persons under investigation. The amendments concern, inter alia, the right to take defending counsel at the preliminary investigation stage, freedom of access to the case file and the right of defending counsel to attend questioning.

Articles 8 and 9

70. The information provided by Switzerland in its initial report is still valid (paras. 60-63).

Article 10

71. Please refer to the information provided by Switzerland in paragraphs 69 and 70 of its initial report, and to paragraph 36 of its second periodic report.

72. A new basic training programme for prison personnel, and a further training programme for officials, provided by the Swiss prison personnel training centre, have been developed. This approach to training, unanimously endorsed by the conference of the heads of the cantonal departments of justice and the police, was introduced in the autumn of 1995. It forms part of in-service training, the introductory parts of which are provided directly by the canton concerned. It includes 15 weeks of theoretical training, as opposed to 12 weeks previously. The theoretical training places greater

emphasis on psychopedagogy and deals thoroughly with the problems arising from the current execution of sentences. It aims to provide a better understanding of detainees, to prepare trainees better to handle attacks and more clearly to identify security problems. During the introductory stage, issues including the development of crime and problems arising from the deprivation of liberty, are dealt with. During the second stage, personnel employed in remand centres and personnel responsible for security in prisons receive additional training relating specifically to their work.

73. Following a redistribution of responsibilities in 1987, the Confederation no longer makes any financial contribution to this training programme. However, the head of the sentences and punitive measures unit of the Federal Justice Department sits on the programme's board.

74. Where measures taken by the cantons are concerned, it should be mentioned that the Canton of Geneva has stepped up its selection and training of applicants for jobs as prison warders and policemen. Lectures are provided on notions of law, the Code of Criminal Procedure, and arrest and interrogation techniques.

Article 11

75. The means of review referred to in paragraph 71 of the initial report are still in force. However, the information provided in paragraphs 43 to 45 of the second periodic report should be supplemented by the following information.

76. Some cantons have amended their regulations on prison establishments, bringing them into line with international standards.

Since April 1993, reports and complaints in the Canton of Geneva about ill-treatment by policemen, prison warders or members of the staff of remand centres have been referred to a former High Court judge. He is responsible for conducting preliminary or administrative investigations. Moreover, in 1993 the jurisdiction of the committee of official visitors of the High Council, which examines the conditions of detention in places of detention in Geneva, was extended: in addition to inspecting establishments for persons in pre-trial detention or convicted prisoners, the committee now also inspects cells in police stations and the lockups at the airport.

The Canton of Saint Gallen has introduced new regulations, which came into force on 1 January 1996, governing district prisons and remand prisons.

The Canton of Solothurn has designated a Cantonal Psychiatric Clinic to monitor persons in detention.

On 10 December 1993 the Canton of Valais adopted regulations on places of detention, whose lawfulness was reviewed by the Federal Court, following an appeal. The Federal Court upheld the lawfulness of the regulations in all respects.

77. A number of cantons - Basel-Country, Bern, Fribourg, Geneva, Glarus, Graubünden, Lucerne, Saint Gallen, Valais, Vaud, Zug and Zurich - have begun construction or refurbishment of places of detention, including district prisons and some police stations, in order to adapt them to the minimum rules of the Council of Europe, by providing intercoms in cells or exercise facilities. The cantons of Valais and Vaud, on the recommendation of the European Committee for the Prevention of Torture, have withdrawn from use cells in some establishments in which people were held under arrest or in custody. In the Canton of Zurich, the inauguration of a new prison has made it possible to transfer all the detainees from the old prison, which was the last one in Switzerland to use slop buckets.

Article 12

78. The information contained in paragraphs 72 and 73 of the initial report is still valid.

79. During the period under review, the judicial authorities of some cantons dealt with several complaints concerning alleged violations of the Convention. The complaints were chiefly of ill-treatment. Most were found to be groundless. In some cases, the policemen involved were convicted.

Three complaints, all of which led to convictions, were lodged in the Canton of Aargau. One of them concerned simple bodily injury, the two others, repeated abuse of authority.

In the Canton of Basel-Country, from four to six complaints are lodged each year by individuals protesting that they are not allowed enough exercise time in police stations - they are allowed exercise only twice or three times a week instead of daily - or that they are unable to take enough showers, or are handcuffed when they are moved; the first two types of complaint should cease as a result of the renovation of the buildings.

One complaint was lodged in Bern Canton for simple bodily injury; it led to a conviction.

Two complaints of assault were filed in the Canton of Fribourg: the investigation into the first of them led to the acquittal of the policeman and the plaintiff's conviction for slander; however, an appeal is pending; in the other case, the competent authorities have not yet taken a decision.

Twenty-seven complaints were filed in the Canton of Geneva against police officers for wilful violence: 25 of them were shelved or found to be groundless by the Prosecutor; in a number of cases, appeals were made against the decisions to shelve the complaints, occasionally reaching the Federal Court - and all the decisions to shelve the complaints were upheld. It should also be mentioned that one of the plaintiffs was convicted of violence and threatening behaviour towards officials; in two cases, the appeals are still pending; in one case, the complaint led to the conviction of the policeman (for slapping someone who insulted him); in another case, two policemen were convicted (for assault in a police station); however, in this case an appeal is pending.

Five complaints were handled in Valais, three of them lodged by the same plaintiff; all were found to be groundless.

Six complaints were filed in the Canton of Zurich, three of which were found to be groundless by the courts. A final decision has not yet been taken on the others.

Article 13

80. Please refer to the information provided in paragraph 74 of the initial report and paragraph 50 of the second periodic report, which is still valid.

Article 14

81. Please refer to the information provided by Switzerland in paragraphs 76 to 78 of its initial report and in paragraphs 52 to 57 of the second periodic report.

Articles 15 and 16

82. Reference should be made to paragraphs 79-82 of the initial report which are still valid.

II. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

83. The additional information requested by the Committee after the submission of the second periodic report was sent in a letter dated 18 November 1994, as the Committee wished. It concerned questions such as the cantonal codes of criminal procedure, decisions by the Federal Court concerning the overall powers of the police, and replies from the cantons concerned in the cases referred to in the report by Amnesty International dated 19 April 1994. Although information on the concept of torture under Swiss law in the light of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (paras. 7-12), the formalities of asylum procedure in Switzerland, including provisions for appeal and legal safeguards (paras. 17-33), and a description of the Federal Act on Coercive Measures in Respect of Aliens Law (paras. 34-45) has already been submitted to the Committee, it has been incorporated into the first part of this report in the interests of clarity and precision.

III. OTHER ACTION TAKEN IN THE INTERNATIONAL SPHERE

84. Switzerland is convinced that the only way of combating torture effectively lies in concerted action by the international community through a three-pronged approach: the prevention and the punishment of torture, and redress and rehabilitation for torture victims.

85. Switzerland supports political, diplomatic, legal and financial preventive measures to combat torture. It has, inter alia, taken the following steps.

86. Switzerland's second periodic report to the Committee against Torture (paras. 61 et seq.) referred to a draft optional protocol to the Convention against Torture and Switzerland's role in supporting such a protocol. The following developments have recently occurred in this respect.

In June 1993, at the initiative of Switzerland and a number of other States, the World Conference on Human Rights reaffirmed that efforts to eradicate torture should, first and foremost, be concentrated on prevention. It called for the early adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which would establish a preventive system of regular visits to places of detention.

At its 1995 session, the Working Group of the Commission on Human Rights responsible for preparing the draft completed its first reading. On 19 April 1996, the Commission - in a resolution sponsored by Costa Rica and Switzerland together with 50 other sponsors - requested the Working Group to begin the second reading with a view to the expeditious completion of a final and substantive text (Commission on Human Rights, resolution 1996/37, para. 2).

With the support of the Swiss Federal Department for Foreign Affairs, in June 1996 the Association for the Prevention of Torture convened a two-day seminar attended by States and non-governmental organizations that support the draft optional protocol. The purpose of the seminar was to prepare for the second reading of the draft by the Working Group, due to begin in October 1996.

87. On 4 November 1993, two additional protocols to the European Convention for the Prevention of Torture were opened for signature. They have not yet come into force. Article 3 of Protocol No. 1 provides that the Committee of Ministers of the Council of Europe may invite any non-member State of the Council of Europe to accede to the Convention. Article 1, paragraph 1, of Protocol No. 2 provides that the members of the European Committee for the Prevention of Torture may be re-elected twice (rather than once as at present). Switzerland expressed its willingness to be bound by both instruments, by signing them without reservation on 9 March 1994.

88. Switzerland also supports action to rehabilitate victims of torture. For a number of years it has provided financial support for the United Nations Voluntary Fund for Victims of Torture and for non-governmental organizations operating in various countries throughout the world.